

**AGREEMENT FOR NEW PLAYGROUND AT  
DUNCAN NEIGHBORHOOD PARK**

This Agreement (the "Agreement") is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2009, by the City of Frisco, Texas (hereinafter called the "City"), a Texas municipal corporation, and Game Time, c/o Total Recreation Products, Inc. (hereinafter called the "Contractor").

**WITNESSETH:**

WHEREAS, the City desires to install a new playground structure at Duncan Neighborhood Park; and

WHEREAS, Contractor specializes in the sale and installation of new playgrounds; and

WHEREAS, City has determined that it is in the best interest of the public to hire Contractor to purchase and install the playground and provide the services described herein.

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. Scope of Services.

The Contractor shall purchase and install one (1) Game Time – TD-07102-09-2A1 Custom PowerScope Unit which will include all specifications set forth by both parties, as well as, removal of (1) previous playground system currently installed at Duncan Neighborhood Park, upon the terms and conditions set forth in the Agreement Documents (as defined below) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the work as specified by the terms and conditions of the Agreement Documents and 'Quote' attached. Furthermore, the City reserves the right to perform the demolition work for this project. In the event the City exercises this option, the contract amount will be decreased accordingly.

2. Terms.

Performance of the Project shall commence upon the 'Notice to Proceed' date. The work shall begin and shall be completed during Christmas school break in December of 2009.

3. Contract Price.

In exchange for those services described in the Agreement Documents, the City agrees to pay Forty Eight Thousand Four Hundred Eighty One Dollars and 43/100 cents (\$48,481.43) to Contractor. The Contractor shall invoice City when the playground equipment ships from the factory. The City shall pay the Contractor the full invoiced amount on the latter of thirty (30) days after receiving the invoice and when the playground is installed and fully operational, having passed an independent playground safety audit by a Certified Playground Safety Inspector (CPSI), at no additional cost to the City. Late payments shall be subject to service charges of 1½% per month (18 APR).

4. Agreement Documents.

The "Agreement Documents", as that term is used herein, shall include the following documents, and this Agreement does hereby expressly incorporate same herein as fully as if set forth verbatim in the Agreement.

A. This Agreement; and

B. The Buy Board Quote attached hereto as Exhibit "A."

This Agreement shall incorporate the terms of Exhibit "A" in its entirety. To the extent that Exhibit "A" is in conflict with provisions of this Agreement, the provisions of this Agreement shall prevail over the provisions of Exhibit "A."

5. Entire Agreement.

The Agreement Documents contain the entire agreement of the parties with respect to the matters contained herein. All provisions of the Agreement Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to the Agreement Documents shall be made except upon the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

6. Insurance.

The Contractor shall procure and keep in full force and effect throughout the term of this Agreement all insurance policies with those coverage amounts deemed necessary by the City. Contractor, and shall present the City with a copy of their Certificate of Insurance, which shall name the City as an additional insured party through completion of the playground equipment installation project.

7. Counterparts.

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

8. Indemnity.

**TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES (COLLECTIVELY REFERRED TO AS "CONTRACTOR" FOR PURPOSES OF THIS SECTION), AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, COUNCIL MEMBERS, REPRESENTATIVES, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INJURIES (INCLUDING DEATH) LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY OUT OF THE OPERATION OR PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT. THE CITY WILL NOT ACCEPT LIABILITY FOR INJURIES THAT ARE THE RESULT OF THE NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION OF CONTRACTOR. CONTRACTOR AGREES TO ACCEPT LIABILITY FOR INJURIES TO ITSELF OR OTHERS CAUSED BY ITS OWN NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION. THIS INDEMNIFICATION PROVISION IS ALSO SPECIFICALLY INTENDED TO APPLY**

TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY OWNER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CITY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CITY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. OWNER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF OWNER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND OWNER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

9. Venue.

This Agreement shall be construed under and in accordance with the laws of the State of Texas and venue shall be in Collin County, Texas.

10. Binding Effect.

This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

11. Ordinances.

Except as specifically provided in the Agreement Documents, the parties agree that contractor shall be subject to all Ordinances of the City, whether now existing or in the future arising.

12. Authority to Execute.

The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

13. Assignment.

This Agreement may not be assigned without the written agreement of both parties.

14. Sovereign Immunity.

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

15. Notice.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to:

Game Time c/o Total Recreation Products, Inc  
Attn: 12022 Knigge C. Road  
Cypress, Texas 77429  
Phone: (832) 237-3100

If to City, to:

City of Frisco  
Attn: City Manager  
6101 Frisco Square Blvd.  
Frisco, Texas 75034

16. Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

17. Representations.

Each signatory represents this Agreement has been read by the party for which this

Agreement is executed and that such party has had an opportunity to confer with its legal counsel.

18. Miscellaneous Drafting Provisions.

This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

19. Default and Remedies. If any party fails to perform any of its obligations under the Contract Documents, such failure shall constitute a default. The nondefaulting party shall give the defaulting party written notice of the default. The defaulting party shall have ten (10) business days after the receipt of such notice in which to cure the default. Failure to cure the default shall constitute a breach of this Agreement. In the event of a breach, the non-breaching party may terminate this Agreement and may obtain any reasonable remedy provided by law.

**IN WITNESS, WHEREOF**, we, the contracting parties, by our duly authorized agents, hereto affixe our signatures and seals on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF FRISCO, TEXAS**  
**a Texas municipality**

By: \_\_\_\_\_  
George Purefoy, City Manager

\_\_\_\_\_  
Jenny Page, City Secretary

**GameTime; c/o Total Recreation Products, Inc.**

By: Bryan P O'Conner  
Print Name: BRYAN O'CONNER  
Title: PRESIDENT TRP

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

**BEFORE ME**, the undersigned authority, on this day personally appeared **George Purefoy**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **City of Frisco, Texas** and he executed said instrument for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

**BEFORE ME**, the undersigned authority, on this day personally appeared Bryan P. O'Connell known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for GameTime c/o Total Recreation Products, Inc. and he/she executed said instrument for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this 2nd day of October, 2009.

Tammy Roberts  
\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: 11/24/2009

